

SECOND REGULAR SESSION

SENATE BILL NO. 844

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATORS GRAHAM, GREEN, CALLAHAN, BRAY, DAYS, BARNITZ,
KENNEDY, DOUGHERTY, WHEELER, WILSON AND COLEMAN.

Read 1st time January 11, 2006, and ordered printed.

TERRY L. SPIELER, Secretary.

3806S.011

AN ACT

To amend chapter 191, RSMo, by adding thereto one new section relating to the reporting of Medicaid fraud.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 191, RSMo, is amended by adding thereto one new
2 section, to be known as section 191.907, to read as follows:

**191.907. 1. A person may bring a civil action for a violation of
2 subsections 1 to 4 of section 191.905 on behalf of the person and the
3 state. The action shall be brought in the name of the person and of the
4 state.**

**5 2. In an action brought under this section, a person who violates
6 subsection 1 to 4 of section 191.905 is liable as provided by subsection
7 11 of section 191.905.**

**8 3. Contemporaneous with the filing of the action, a person
9 bringing an action under this section shall serve a copy of the petition
10 upon the attorney general and shall disclose, in writing, substantially
11 all material evidence and information in the person's possession to the
12 attorney general.**

**13 4. The petition shall be filed in camera and, except as provided
14 by subsection 5 or 6 of this section, shall remain under seal until at
15 least one hundred and twenty days following the date the petition is
16 filed, or until the date the state elects to intervene, whichever occurs
17 first. The petition shall not be served upon the defendant until ordered
18 by the court.**

**19 5. The attorney general, on behalf of the state, may elect to
20 intervene and proceed with the action not later than the one hundred**

21 and twentieth day following the date the petition is filed. The attorney
22 general may, for good cause shown, move the court to extend this
23 deadline, and may support such motion by affidavits or other
24 submissions in camera.

25 6. Contemporaneous with the decision to intervene, the attorney
26 general may move the court to keep the petition under seal for an
27 extended period of time.

28 7. An action under this section may be dismissed before the end
29 of the period during which the petition remains under seal if the court
30 and the attorney general consent in writing to the dismissal, and state
31 in writing the reasons for consenting.

32 8. A defendant in any action brought under this section shall not
33 be required to file an answer to the petition until thirty days following
34 the date the petition is served on the defendant.

35 9. Not later than the last day of the period prescribed by
36 subsection 4 of this section, or an extension of that period granted by
37 the court under subsection 5 of this section, the state shall:

38 (1) Proceed with the action; or

39 (2) Notify the court that the state declines to intervene in the
40 action.

41 10. If the state elects not to intervene in the action, the person
42 who initiated the action shall be entitled to conduct the action. If the
43 state so requests, it shall be served with copies of all pleadings filed
44 and shall be supplied with copies of all deposition transcripts at the
45 state's expense. If the state chooses not to intervene within the period
46 prescribed by subsection 4 of this section, the court, without limiting
47 the status and rights of the person initiating the action, may
48 nevertheless permit the state to intervene at a later date upon a
49 showing of good cause.

50 11. A person other than the state may not intervene or bring a
51 related action based on the facts underlying a pending action brought
52 under this section.

53 12. If the state elects to intervene in the action, it shall have the
54 primary responsibility for conducting the action and shall not be bound
55 by any act of the person who initiated the action. The person who
56 initiated the action shall have the right to continue as a party in the
57 proceeding, subject to the limitations set forth in this section.

58 13. The state may dismiss any action brought under this section
59 notwithstanding an objection by the person who initiated the action,
60 but only if:

61 (1) The attorney general has notified the person who initiated
62 the action that the state has filed a motion to dismiss; and

63 (2) The court provides the person with an opportunity for a
64 hearing on the motion.

65 14. The state may settle the action with the defendant,
66 notwithstanding an objection by the person who initiated the action, if
67 the court determines, after a hearing, that the proposed settlement is
68 fair, adequate, and reasonable, considering all relevant
69 circumstances. Upon a showing of good cause, the hearing may be held
70 in camera.

71 15. Upon a showing by the state that unrestricted participation
72 during the course of litigation by the person who initiated the action
73 would cause harassment of the defendant, or would interfere with or
74 unduly delay the state's investigation or prosecution of the case, or
75 would be repetitious or irrelevant, the court may impose limitations on
76 the person's participation, including:

77 (1) Limiting the number of witnesses the person may call;

78 (2) Limiting the length of the testimony of witnesses called by
79 the person;

80 (3) Limiting the person's cross-examination of witnesses; or

81 (4) Any other limitation on participation that the court deems
82 necessary or appropriate.

83 16. Upon a showing by the defendant that unrestricted
84 participation during the course of litigation by the person bringing the
85 action would be for the purposes of harassment, or would cause the
86 defendant undue burden or unnecessary expense, the court may limit
87 the participation by the person in the litigation.

88 17. Upon a showing by the state that certain actions of discovery
89 by the person bringing the action would interfere with the state's
90 investigation or prosecution of a criminal or civil matter arising out of
91 the same facts, the court may stay the discovery for a period not to
92 exceed sixty days. The court shall hear a motion to stay discovery
93 under this subsection in camera.

94 18. The court may extend the stay of discovery prescribed by

95 subsection 17 of this section upon a further showing in camera that the
96 state has pursued the criminal or civil investigation or proceedings
97 with reasonable diligence and that any proposed discovery in the civil
98 action would interfere with the ongoing investigation or proceedings.

99 19. Notwithstanding subsection 1 of this section, the state may
100 elect to pursue its claim through any alternate remedy available to the
101 state, including any administrative proceeding to determine an
102 administrative penalty. If an alternate remedy is pursued in another
103 proceeding, the person who initiated the action shall have the same
104 rights in the other proceeding as the person would have had if the
105 action brought under this section had continued. Any finding of fact
106 or conclusion of law made in the other proceeding that has become
107 final shall be conclusive on all parties to an action brought under this
108 section. For the purposes of this subsection, a finding or conclusion is
109 final if the finding or conclusion has been finally determined on appeal
110 to the appropriate court of jurisdiction, if no appeal has been filed with
111 respect to the finding or conclusion and all time for filing an appeal
112 has expired, or if the finding or conclusion is not subject to judicial
113 review.

114 20. If the state proceeds with an action under this section, the
115 person bringing the action shall be entitled, except as provided by
116 subsection 21 of this section, to receive at least ten percent but not
117 more than twenty-five percent of the proceeds of the action, depending
118 on the extent to which the person substantially contributed to the
119 prosecution of the action. If the court finds that the action is based
120 primarily on disclosures of specific information, other than information
121 provided by the person bringing the action, relating to allegations or
122 transactions in a criminal or civil hearing, in a legislative or
123 administrative report, hearing, audit, or investigation, or from the
124 news media, the court may award the amount the court considers
125 appropriate but not more than seven percent of the proceeds of the
126 action, taking into account the significance of the information and the
127 role of the person bringing the action in advancing the case to
128 litigation. A payment to a person under this subsection shall be made
129 from the proceeds of the action or proceeds of a settlement of the
130 action. A person receiving a payment under this subsection shall also
131 be entitled to receive from the defendant an amount for reasonable

132 expenses, reasonable attorney's fees, and costs that the court finds to
133 have been necessarily incurred. The court's determination of expenses,
134 fees, and costs to be awarded under this subsection shall be made only
135 after the defendant has been found liable in the action. In addition, the
136 defendant shall be required to reimburse the reasonable costs
137 attributable to the attorney general's investigation and prosecution of
138 the action. The office of the attorney general may retain a reasonable
139 portion of recoveries under this section for the enforcement of sections
140 191.900 to 191.915.

141 21. If the court finds that the action was brought by a person
142 who planned and initiated the violation of subsections 1 to 4 of section
143 191.905 on which the action was brought, the court may, to the extent
144 the court considers appropriate, reduce the share of the proceeds of the
145 action the person would otherwise receive under subsection 20 of this
146 section, taking into account the person's role in advancing the case to
147 litigation and any relevant circumstances pertaining to the violation.
148 If the person bringing the action is convicted of criminal conduct
149 arising from the person's role in the violation of subsections 1 to 4 of
150 section 191.905, the court shall dismiss the person from the action, and
151 the person may not receive any share of the proceeds of the action. A
152 dismissal under this subsection does not prejudice the right of the state
153 to continue the action.

154 22. If the state does not proceed with the action and the person
155 bringing the action conducts the action, the court may award to the
156 defendant its reasonable attorney's fees and expenses if the defendant
157 prevails in the action and the court finds that the claim of the person
158 bringing the action was clearly frivolous, clearly vexatious, or brought
159 primarily for purposes of harassment.

160 23. A person may not bring an action under this section that is
161 based on allegations or transactions that are the subject of a civil suit
162 or an administrative penalty proceeding in which the state is already
163 a party.

164 24. A person may not bring an action under this section that is
165 based on the public disclosure of allegations or transactions in a
166 criminal or civil hearing, in a legislative or administrative report,
167 hearing, audit, or investigation, or from the news media, unless the
168 person bringing the action is an original source of the information. In

169 this subsection, "original source" means an individual who has direct
170 and independent knowledge of the information on which the allegations
171 are based and has voluntarily provided the information to the state
172 before filing an action under this section that is based on the
173 information.

174 25. The state shall not be liable for expenses that a person incurs
175 in bringing an action under this section.

176 26. A person who is discharged, demoted, suspended, threatened,
177 harassed, or in any other manner discriminated against in the terms of
178 employment by the person's employer because of a lawful act taken by
179 the person in furtherance of an action under this section, including
180 investigation for, initiation of, testimony for, or assistance in an action
181 filed or to be filed under this section, shall be entitled to reinstatement
182 with the same seniority status the person would have had but for the
183 discrimination, not less than two times the amount of back pay, interest
184 on the back pay, and compensation for any special damages sustained
185 as a result of the discrimination, including litigation costs and
186 reasonable attorney's fees. A person may bring an action in the
187 appropriate circuit court for the relief provided in this subsection.

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